

REMARKS

In accordance with the foregoing, claims 1 and 41 are amended and claim 12 is cancelled, such that only allowable claims remain in the application. Claims 1-11, 13-19, and 41-43 are pending and under consideration.

This amendment is believed to place the application in condition for allowance, and entry therefore is respectfully requested. In the alternative, entry of this amendment is requested as placing the application in better condition for appeal by, at least, reducing the number of issues outstanding.

Entry of Amendment under 37 C.F.R. § 1.116

The Applicant requests entry of this Rule 116 Response because the amendment does not significantly alter the scope of the claims and places the application at least into a better form for purposes of appeal. No new features or new issues are being raised.

The Manual of Patent Examining Procedures (M.P.E.P.) sets forth in Section 714.12 that “any amendment that would place the case either in condition for allowance or in better form for appeal may be entered.” Moreover, Section 714.13 sets forth that “the Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified.” The M.P.E.P. further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

I. Rejections under 35 U.S.C. § 103

In the Office Action, at pages 3-6, claims 1-5, 8-11, 13-19, and 41-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Horita et al. (U.S. Patent No. 6,034,422) in view of Kamada (U.S. Patent No. 4,518,449).

In the Office Action, at page 7, claims 6-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Horita et al. and Kamada in view of Nagai et al. (U.S. Patent Pub. No. 2003/0044597).

In the Office Action, at page 7, claim 12 was objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The features of claim 12 have been incorporated into claim 1, from which it directly depends, and claim 12 has been cancelled. Thus, it is submitted that independent claim 1 is now in a condition suitable for allowance.

Claims 2-11 and 13-19 depend either directly or indirectly from claim 1, and include all the features of claim 1, plus additional features that are not discussed or suggested by the cited prior art. Therefore, claims 2-11 and 13-19 patentably distinguish over the cited prior art for at least the reasons noted above. Accordingly, withdrawal of these § 103(a) rejections is respectfully requested.

As discussed above, and as acknowledged by the Examiner at page 7 of the Office Action, neither Horita et al. nor Kamada, alone or in combination, discuss or suggest:

said layer of copper oxide has a three-layered structure comprising, in sequence, a cuprous oxide (Cu_2O) layer, a cupric oxide (CuO) layer and a cupric hydroxide ($\text{Cu}(\text{OH})_2$) layer from the side of said substrate,

as recited in amended independent claim 41, so that claim 41 patentably distinguishes over the cited prior art. Accordingly, withdrawal of the § 103(a) rejection is respectfully requested.

Claims 42-43 depend either directly or indirectly from claim 41, and include all the features of claim 41, plus additional features that are not discussed or suggested by the cited prior art. Therefore, claims 42-43 patentably distinguish over the cited prior art for at least the reasons noted above. Accordingly, withdrawal of these § 103(a) rejections is respectfully requested.

II. Allowable Subject Matter

In the Office Action, at page 7, claim 12 was objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 12 has been cancelled as discussed above. Accordingly, withdrawal of the objection is respectfully requested.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Docket No.: 300.1154

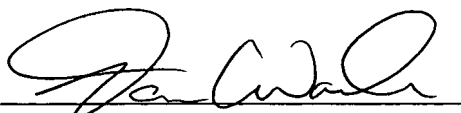
Serial No. 10/824,523

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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